IN THE

Supreme Court of the United States

October Term, 1976

No. 77-124

OVERSEAS OIL CARRIERS, INC.,

Petitioner,

against

THE PENINSULAR & ORIENTAL STEAM NAVIGATION COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit in the above case.

Opinions Below

The Opinion of the District Court (Judge Goettel) is reported at 418 F. Supp. 656, and appears at page 12a of the Appendix herein.*

The Opinion of the United States Court of Appeals, dated April 25, 1977, is as yet unreported and appears at page 21a of the Appendix herein.

*(a) refers to pages in the Appendix to this Petition.

Jurisdiction

The judgment of the Court of Appeals reversing the District Court was entered on the 25th day of April, 1977 (33a).

The jurisdiction of this Court is invoked under 28 U. S. Code, Section 1254 (1) and 28 U. S. Code, Section 2101 (c).

Questions Presented for Review

1. When a Court grants to the assisting vessel a recovery of the costs of extra fuel consumed in responding to a call for emergency medical assistance at sea, does that decision not conflict with our laws and decisions barring recovery for life salvage?

2. In an action by a vessel, which responded to a radio call for emergency medical assistance at sea, to recover from the assisted vessel the expenses of extra fuel consumed, to what extent must time-tested custom, practice and tradition of the sea bow to equitable concepts reflected in the land-based law of restitution?

3. When it is held, in the absence of any earlier decisions on the subject by this Court or any other Court in the United States, that an assisting vessel is entitled to recover fuel expenses incurred in responding to a call for emergency medical assistance at sea, and that holding is in direct conflict with long-standing maritime practice and traditions, is it not desirable that this Court should review the matter in the interest of uniformity and as part of this Court's traditional responsibility to vindicate the policies of maritime law?

Statement of the Case

The jurisdiction of the District Court was invoked on the basis of diversity of citizenship. Plaintiff (Respondent) is a British company, defendant (Petitioner) is a United States corporation.

Respondent, the owner of the British-flag passenger vessel s/s Canberra, sued Petitioner, the owner of the American flag tanker s/t Overseas Progress, to recover the sum of $12,108.95, representing in the main the cost of additional fuel consumed by s/s Canberra when she responded to a call for emergency medical assistance in mid-Atlantic by s/t Overseas Progress, one of whose crewmembers had suffered a heart attack. The amount sued for also included the costs of medical, nursing and hospital services afforded to the ill crewman after he had been transferred from s/t Overseas Progress to s/s Canberra in mid-ocean. Respondent alleged in its complaint that Petitioner had been "unjustly enriched" in the amount sued for.

The action was tried before Judge Goettel in the United States District Court for the Southern District of New York on stipulated facts. The District Court allowed Respondent's claim for hospital accommodations and nursing expenses in the amount of $500, but denied the major portion of the claim representing extra fuel consumed by s/s Canberra, holding that there was no basis in law for such a recovery and that the claim ran counter to long-standing traditions of the sea.

Respondent appealed from the District Court's denial of its claims for the costs of the extra fuel.

The United States Court of Appeals for the Second Circuit reversed in a decision dated April 25, 1977, holding that despite traditions to the contrary Respondent was entitled to recover its fuel costs from Petitioner "regardless of the benefit actually conferred." (32a)

The Facts

The action was tried on the basis of an Agreed Fact Statement, dated April 7, 1975 (1a), and a Stipulation and Additional Agreed Fact Statement, dated June 7, 1976 (8a) together with Exhibits.

Petitioner was the owner of an American-flag tanker, s/t Overseas Progress, of 13,030 gross tons having no medical or hospital facilities, which was en route from Haifa to Baltimore, s/t Overseas Progress had a maximum speed of 13.8 knots. Respondent was the owner of s/s Canberra, a British-flag passenger vessel of 43,975 gross tons having a ship's hospital and medical and nursing staffs, which was on a voyage from Dakar to New York with passengers aboard. s/s Canberra had a maximum speed of approximately 25 knots.

On July 4, 1973, William Turpin, a member of the crew of s/t Overseas Progress experienced severe chest pains for which he was treated on that and on the following day by the officers of his vessel guided by the ship's medical books and radio advice from the U. S. Public Health Service in the United States. On the evening of July 5, 1973, William Turpin suffered a further attack which was sufficiently severe to cause the Master of s/t Overseas Progress to send a radio message to all ships in the vicinity. s/s Canberra, among others, responded to this call, and the Master of s/t Overseas Progress then spoke by radio to the Master of s/s Canberra and asked for medical assistance. After a rendezvous point had been agreed upon, s/s Canberra changed course and increased her speed from 23 to 25 knots. s/t Overseas Progress, which was already making maximum speed, also changed course for the rendezvous point.

Approximately six hours later the two ships met, and William Turpin was transferred by boat to s/s Canberra's hospital where he received medical attention for the balance of that vessel's voyage to New York.

At the time of the transfer in mid-ocean a letter reflecting the earlier radio conversation was delivered to the Captain of s/t Overseas Progress for his counter-signature. This letter, Exhibit "A" to the Agreed Fact Statement of April 7, 1975 (7a) reads as follows:

> "Dear Sir:
>
> I trust you understood my remarks on the R.T. [radio-telep' one] when I came to your assistance. I have to inform you that you should inform your owners my company, P & O Steam Navigation Company, may look to them for reimbursement of diversion costs, medical and out-of-pocket expenses.
>
> Would you please sign a copy of this letter to indicate your understanding and receipt of this information."

The import of this letter was clarified by Counsel for both parties in paragraph 29 of the Additional Agreed Fact Statement (8a):

> "The countersigned message, copy of which is annexed as Exhibit "A" to the parties' agreed fact statement dated April 7, 1975, accurately confirms the radio-telephone ('R. T.') remarks therein summarized; to wit, that plaintiff's Master told defendant's Master that plaintiff 'may look' to defendant for reimbursement, and defendant's Master acknowledged that plaintiff's Master had so stated. During these 'R. T.' remarks, plaintiff's Master did not demand reimbursement on behalf of plaintiff nor did defendant's Master agree to make reimbursement on

behalf of defendant. Both Masters simply left open for subsequent determination by their respective employers, plaintiff and defendant, whether plaintiff would demand reimbursement and, if so, whether defendant would make reimbursement."

The liability issue in the District Court was stipulated by the parties to have been "the question of whether defendant [Petitioner] is or is not liable to reimburse plaintiff's [Respondent] diversion costs and medical and out-of-pocket expenses." (8a)

REASONS FOR GRANTING THE WRIT

I

The decision below granting Repondent a recovery of its fuel expenses conflicts with prevailing United States law barring recovery of such expenses in cases of life salvage.

There is no difference between what the Court below has done here and an award for life salvage limited to reimbursement of the salvor's expenses. Yet our law is emphatic that there can be no recovery of any form of compensation for life salvage.

Title 46 U.S. Code, Section 729, provides as follows:

> "Salvors of human life, who have taken part in the services rendered on the occasion of the accident giving rise to salvage, are entitled to a fair share of the remuneration awarded to the salvors of the vessel, her cargo, and accessories."

Professors Gilmore and Black in their text *The Law of Admiralty,* 2nd Ed. 1975, at page 532, commented upon this statute, writing:

> "Historically, the saving of life was regarded as fulfilling a moral duty but not as entitling the salvor to a reward. Thus there was a natural temptation to save property first and look around for survivors later. Life salvors now have by statute a right to a 'fair share' of the award made to salvors *who have saved property on the same occasions.* Life salvage, unaccompanied by property salvage, still goes unrewarded." (Emphasis supplied)

An interesting commentary on the problem is to be found in an article entitled *The Life Salvor Problem in Admiralty* by Professor Lawrence Jarett, 63 YALE LAW JOURNAL 779. Professor Jarett, a member of the New York Bar, was Associate Professor of Law at the United States Merchant Marine Academy. In reviewing the early origins of the principles of marine salvage, Professor Jaret noted at page 781 that:

> "The earliest maritime codes speak of salvage awards as proportions of property saved, and give no consideration to any award for saving lives."

After noting that Great Britain had enacted a life salvage statute in the Merchant Shipping Act of 1894 which granted an award based on the cost of the *actual expenses* incurred in the life rescue operation plus reasonable compensation, Professor Jarett commented at page 784:

> "But the life salvage doctrine in America inexplicably failed to duplicate the English development. Although our courts cast envious glances across the

> Atlantic toward the English recognition of the life salvor, they felt compelled to adhere, in the absence of legislation, to the established general maritime rule that the saving of life alone could not be rewarded."

The few decisions in our Courts have consistently denied recovery of any monies whatsoever by one seeking compensation for assistance rendered to life alone. *The Eastland,* 262 F. 535 (D.C.N.D. Ill. E.D. 1919); *The Shreveport,* 42 Fed. 2nd 524, 537 (D.C.E.D.S.C. 1930); and *Saint Paul Marine Transportation Corp.* v. *Cerro Sales Corporation,* 313 F. Supp. 377 (D.C. Hawaii 1970).

There is a conflict between the foregoing authorities and the decision of the Court below, for the expenses incurred by a salvor (including fuel consumed over and above the regular needs of the assisting vessel) are important elements of the awards allowed by our Courts over the years in cases involving property salvage or concurrent property and life salvage. *The Mexico,* 252 Fed. 880, 882 (E.D.Va. 1918); *Saint Paul Marine Transportation Corp.* v. *Cerro Sales Corporation, supra;* and *Perez* v. *Barge LBT #4,* 416 F.2d 407, 408 (5 C.A. 1969). In cases of life salvage alone, however, our Courts have denied such claims *in toto,* including those portions of the claims reflecting expenses for additional fuel.

If a vessel which rendered emergency medical assistance at sea to a seaman aboard another vessel were to attempt to recover its expenses (as did Respondent in this case) while referring to its claim as one for salvage its recovery would be denied under existing statutes and decisions. On the other hand, the same claim made here, now characterized as one for restitution alleging that the assisted vessel had been unjustly enriched, has been allowed by the Court below. In each instance the nature of the services rendered would have been the same, and the amounts sought to be recovered would have been identical.

We submit, therefore, that the decision of the Court below runs counter to the authorities barring recovery of any expenses or rewards in the case of assistance rendered at sea to a person as opposed to property.

II

The decision of the Court below has undermined a centuries-old workable tradition whose focal point was voluntary assistance to other seamen in need of help.

The extent to which Petitioner's declination to pay Respondent's claim was motivated by a concern to preserve the traditions of the sea is reflected by Exhibit F (10a), a letter sent by the Operator of s/t Overseas Progress to Respondent, which read in part as follows:

> "Although we are extremely grateful for the kind assistance you have rendered Mr. Turpin, we must point out that your claim does not appear to be in keeping with the norms and practices of the traditional concept of rescue at sea.
>
> Indeed, we have on many occasions rendered similar aid at great risk to our crews and vessels but have never entertained the thought of recovering our expenses.
>
> We hope that our position will meet with your understanding and trust that you will accept the assurance of our willingness to reciprocate in the unhappy event that the roles should one day be reversed."

Subsequently, and after Respondent had referred the claim to its counsel, the same Operator wrote to that counsel indicating once more that it was not a concern for money, but rather a concern for the traditions of the sea which prompted the refusal to pay. Whereas this letter of November 15, 1973, is not part of the record, we are certain that counsel for Respondent would not deny its contents, which read in part:

> "Somehow, we feel that we would be doing the entire principle of rescue at sea a great disservice if we voluntarily accepted to indemnify one of the last codes of brotherhood among men.
>
> We suggest therefore that after careful scrutiny of the amounts claimed by P & O, it should be agreed that P & O would send 50% of the total settlement to their designated charity and that we in turn should channel the other 50% to our own favorite charity."

As stated by District Judge Goettel in the opening sentences of his decision denying Respondent's claim for extra fuel expenses:

> "The sea is a hard master and those who sail her are united in a common struggle. It is their tradition to answer calls of distress regardless of cost or peril." (12a)

Or, the closing sentence of Judge Goettel's decision:

> "Plaintiff [Respondent] is left, however, with the recognition that its efforts were in keeping with the finest traditions of the sea." (20a)

The Court below, whose conclusions were opposed to those of the District Court, recognized nevertheless the

unique situation in which seamen, removed from ready access to medical attention, find themselves, for the opinion opened with the following words:

> "The perils and hardships of the sea have been notorious since the voyages of Odysseus. Although the age of sirens and cyclopes is passed, the isolation and uncertainty of maritime life continues to create unique problems for sailors and courts of admiralty." (22a)

The voluntary aspects of the current approach to problems raised by rescues at sea are reflected in the United States Coast Guard's AMVER program (automated mutual-assistance vessel rescue), a program which has received international endorsement from both the International Convention for the Safety of Life At Sea, 1960 (SOLAS) and the Inter-Governmental Maritime Consulative Organization (IMCO). AMVER is an international plan designed to assist the safety of merchant vessels on the high seas throughout the world through a system of voluntary periodic position reports by ships while en route to shore radio stations which forward them in turn to the AMVER centers. At those centers the information is entered into computers, which calculate positions by dead reckoning. When a recognized Rescue Center of any nation learns of an emergency at sea it is encouraged to obtain a computer-predicted listing of ships in the vicinity of the emergency to see which, if any, might be well suited to provide appropriate help. Participation by innumerable vessels of all nationalities on a voluntary basis is free of cost to the vessel and her owners and is designed to eliminate as much delay as possible to those needing aid at sea.

The terms of the *International Convention for the Safety of Life At Sea, 1960*, 16 U.S.T. 185, T.I.A.S. 5780,

which was ratified by the United States and whose acceptance took effect on May 26, 1965, speak about an obligation to render assistance with no mention of remuneration.

Sub-paragraphs (a) and (b) of Regulation 10 of Chapter V of this Convention read as follows:

> "(a) The master of a ship at sea, on receiving a signal from any source that a ship or aircraft or survival craft thereof is in distress, is bound to proceed with all speed to the assistance of the persons in distress informing them if possible that he is doing so. If he is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to their assistance, he must enter in the logbook the reason for failing to proceed to the assistance of the persons in distress.
>
> (b) The master of a ship in distress, after consultation, so far as may be possible, with the masters of the ships which answer his call for assistance has the right to requisition such one or more of those ships as he considers best able to render assistance, and it shall be the duty of the master, or masters of the ship or ships requisitioned to comply with the requisition by continuing to proceed with all speed to the assistance of persons in distress."

As long ago as 1912 our own laws incorporated such an *obligation* upon a master receiving a call for help. 46 U.S. Code, Section 728 bearing on the duty of a master to assist persons in danger provides:

> "The master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, crew, or passengers, render assistance to every person who is found at sea in danger

> of being lost; and if he fails to do so, he shall, upon conviction, be liable to a penalty of not exceeding $1,000 or imprisonment for a term not exceeding two years, or both."

It is relevant to note that until Respondent instituted this action in the District Court in New York there has been no reported case involving a claim for reimbursement of expenses entailed in rendering assistance at sea to an ill or injured seaman of another vessel. Certainly, until the decision of the Court below, there had been no holding that the assisting vessel was entitled to reimbursement of its expenses. It would seem obvious that despite the propensity of the maritime industry to resort to litigation, the traditions of the sea have been strong enough to discourage any such claims and effective enough in practical application to negate any desire for change.

Up to now, all the concentration, both on the part of the rescued vessel and on the part of the rescuing vessel, has been centered upon the welfare of the ill, injured or missing crewmember.

The Court below has injected a new element and tells us that henceforth the master of a vessel asking for emergency assistance for an injured, ill or missing crewmember must determine the amount of the expenses which his owner will incur if the other vessel does in fact respond to the call, equate those costs against the extent of the need, and then make a decision as to whether to proceed with the call for help.

Only one person can suffer from this new approach, and that is the individual seaman on whose behalf the aid is being requested.

III

In the interests of uniformity in the application of maritime law this Court should rule on the issue of whether a vessel calling for emergency medical help at sea must be prepared to pay the expenses of those who respond to that call.

It should hardly be necessary to remind this Court of its unique position with respect to our maritime law, not only with regard to ensuring uniformity among the Circuits, but also in terms of establishing the substantive maritime law.

In *United States* v. *Reliable Transfer Co.*, 421 U.S. 397 (1975) a unanimous Court, in an opinion delivered by Mr. Justice Stewart, overruled this country's admiralty rule of divided damages in collision cases and established the rule of proportionate fault. The Court stated at page 409:

> "Finally, the respondent suggests that the creation of a new rule of damages in maritime collision cases is a task for Congress and not for this Court. But the Judiciary has traditionally taken the lead in formulating flexible and fair remedies in the law maritime, and 'Congress has largely left to this Court the responsibility for fashioning the controlling rules of admiralty law.' *Fitzgerald* v. *United States Lines Co.*, 374 U.S. 16, 20. See also *Moragne* v. *States Marine Lines*, 398 U.S. 375, 405 n. 17; *Kermarec* v. *Compagnie Generale Transatlantique*, 358 U.S. 625, 630-632."

In a footnote on that same page the historical part played by the Supreme Court in matters of substantive law was acknowledged in the following terms:

> "This Court, in other appropriate contexts, has not hesitated to overrule an earlier decision and settle a matter of continuing concern, even though relief might have been obtained by legislation. See *Burnet* v. *Coronado Oil & Gas Co.*, 285 U.S. 393, 406 n. 1 (Brandeis, J., dissenting) (collecting cases)."

Earlier, this Court established a uniform cause of action to cover wrongful deaths occurring on navigable waters of a state in *Moragne* v. *States Marine Lines*, 398 U.S. 375, 396 (1970), writing:

> "There should be no presumption that Congress has removed this Court's traditional responsibility to vindicate the policies of maritime law by ceding that function exclusively to the States."

And from pages 401-2 of that same opinion:

> "Such uniformity not only will further the concerns of both of the 1920 Acts but also will give effect to the constitutionally based principle that federal admiralty law should be 'a system of law coextensive with, and operating uniformally in the whole country.' *The Lottawanna*, 21 Wall. 558, 575 (1875)."

If, a further example of this Court's unique relationship to the maritime law should be necessary we could cite *Pope & Talbot, Inc.* v. *Hawn*, 346 U.S. 406 (1953), a case in which this Court emphasized the need for uniformity among the Circuits. In a concurring opinion Mr. Justice Frankfurter commented upon this Court's role in establishing substantive maritime law, stating about the majority opinion (at page 418):

> "It raises subtle issues of such judicial law making as is the main source of maritime law."

In the present state of the decisions neither the master asking for emergency help nor the master rendering that help can know the extent of their rights and obligations, for there is no more reason to believe that the Courts of the other Circuits will follow this Second Circuit ruling than to believe that they will adhere to existing traditions.

In the interests of uniformity this Court should resolve the issue so that all masters at sea may know what the law provides when they send out calls for help in an emergency.

CONCLUSION

For the foregoing reasons it is respectfully requested that the petition for a writ of certiorari herein be granted.

Dated: July 21, 1977.

Respectfully submitted,

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of Counsel.

APPENDIX

Agreed Fact Statement

1. When this suit was commenced and at all material times, plaintiff was and is an English limited liability company with its principal place of business in London and with no New York office.

2. When this suit was commenced and at all material times, defendant was and is a New York corporation with its principal place of business in New York.

3. At all material times plaintiff owned and operated S.S. CANBERRA and employed her crew.

4. At all material times defendant owned S.T. OVERSEAS PROGRESS and employed her crew, and Maritime Overseas Corporation managed S.T. OVERSEAS PROGRESS as defendant's agent.

5. At all material times OVERSEAS PROGRESS was an American flag tanker of approximately 13,030 gross tons with maximum speed of approximately 13.8 knots.

6. At no material time did OVERSEAS PROGRESS have any ship's doctor or nurse or any operating room.

7. At all material times CANBERRA was a British flag passenger vessel of approximately 43,975 gross tons with approximately 820 crewmembers, a passenger capacity of approximately 2,238, and a maximum speed of approximately 25 knots.

8. At all material times CANBERRA had a hospital, an operating room, a ship's surgeon, an assistant surgeon, two nurses, and a hospital assistant.

Agreed Fact Statement

9. On July 4, 5, and 6, 1973, William Turpin was a crewmember of OVERSEAS PROGRESS and was employed by defendant.

10. On July 4, 5, 6, 7, and 8, 1973, CANBERRA was en route from Dakar to New York with passengers, having departed Dakar on July 1, 1973, and OVERSEAS PROGRESS was en route from Haifa to Baltimore, having cleared Gibraltar on June 29, 1973.

11. On July 4, 1973 William Turpin reported that he was experiencing severe chest pain. On July 4 and 5, 1973, the Officers of OVERSEAS PROGRESS gave or caused to be given to William Turpin several morphine injections and glycerin nitrate tablets for suspected heart attack, guided by ship's medical books and radio advices from the Public Health Service.

12. During the evening of July 5, 1973, William Turpin suffered a further attack accompanied by severe chest pain, and the Master of OVERSEAS PROGRESS caused a radio request to be sent asking all ships in the vicinity which had a doctor to answer. Three ships answered that request: CANBERRA, S.S. MICHELANGELO, and a Russian vessel name unknown. The closest to OVERSEAS PROGRESS of those three ships was CANBERRA.

13. At 2114 Greenwich Mean Time (GMT) on July 5, 1973, CANBERRA received a second message from OVERSEAS PROGRESS that the latter had a crewmember [William Turpin] who was in critical condition with apparent heart attack, and requesting CANBERRA to meet OVERSEAS PROGRESS to give treatment. At that time, OVERSEAS PROGRESS reported that she was on course 270 degrees true, maintaining

Agreed Fact Statement

speed of 13.8 knots, and was at position 35 degrees 58 minutes north, 45 degrees 10 minutes west. At that time, CANBERRA was at 32 degrees 30 minutes north, 48 degrees west, on course 283 degrees true, making an average speed of 23 knots at 118½ revolutions per minute (RPM).

14. In response to that second message, CANBERRA agreed to meet OVERSEAS PROGRESS at 35 degrees 13 minutes north, 46 degrees 22 minutes west. To effect that meeting both ships altered course at approximately 2130 GMT. OVERSEAS PROGRESS maintained her maximum speed of 13.8 knots and changed course from 270 degrees true to 229 degrees true. CANBERRA increased her speed from 23 knots to 25 knots by adding 9½ RPM, and changed course from 283 degrees true to 50 degrees true.

15. The Master of OVERSEAS PROGRESS was authorized by defendant to send or cause to be sent the aforementioned radio requests.

16. Solely because of the aforementioned radio requests, CANBERRA rendezvoused with OVERSEAS PROGRESS, and CANBERRA's ship's surgeon treated William Turpin.

17. At 2130 GMT on July 5, 1973, the nearest shore hospital to OVERSEAS PROGRESS was in St. John's, Newfoundland, 740 miles away which, at a speed of 13 knots, would have taken OVERSEAS PROGRESS 57 hours to reach and would have necessitated a course change from 270 degrees true to 335 degrees true.

18. Approximately 6¼ hours after CANBERRA and OVERSEAS PROGRESS altered course, they rendezvoused at 35 degrees 13 minutes north, 46 degrees 22 minutes west, CANBERRA having travelled 140 miles at maximum speed of approximately 25 knots and OVERSEAS PROGRESS having

travelled 78 miles at maximum speed of approximately 13.8 knots.

19. After rendezvousing with OVERSEAS PROGRESS, CANBERRA lowered one of her boats and transferred William Turpin aboard for hospital treatment. After taking William Turpin aboard, CANBERRA continued the increased 9½ revolutions per minute speed of approximately 25 knots to New York, where she arrived on July 8, 1973 about 2½ hours after her scheduled arrival time.

20. While William Turpin, who was then about 63 years old, was aboard CANBERRA, the ship's surgeon diagnosed that he had suffered a recent myocardial infarction and was also diabetic.

21. In August 1973, defendant received from Cunard Line, plaintiff's landing agent at New York, a $248 bill for services rendered to William Turpin by CANBERRA's surgeon, and defendant promptly paid that bill.

22. When the boat from CANBERRA came alongside OVERSEAS PROGRESS on July 6, 1973, the person in charge brought a typed message from the Master of CANBERRA to the Master of OVERSEAS PROGRESS, requesting that the latter countersign the message to confirm an earlier radio-telephone conversation between the two Masters. The Master of OVERSEAS PROGRESS complied with this request and countersigned the message. A copy of the countersigned message is annexed hereto, market Exhibit "A", and made a part hereof. The countersigning by the Master of OVERSEAS PROGRESS was done with the authority of defendant.

23. The distance from CANBERRA's position at 2130 GMT on July 5, 1973 to the entrance to New York harbor is 1,166 miles. The distance from the place where CANBERRA and OVERSEAS PROGRESS rendezvoused to the entrance to New

York harbor is 1,258 miles. That additional distance of 92 miles plus the 140 miles which CANBERRA steamed in order to meet OVERSEAS PROGRESS makes a total of 232 extra miles which CANBERRA necessarily travelled solely because of the request for assistance by OVERSEAS PROGRESS.

24. Although defendant is not prepared at this time to agree as to the amounts of extra fuel necessarily consumed by CANBERRA or the monetary value of any such fuel, defendant concedes that CANBERRA steamed the aforementioned 232 extra miles solely because of the aforementioned request for assistance by OVERSEAS PROGRESS. Defendant also concedes that the extra fuel consumed by CANBERRA in increasing speed from approximately 23 knot to approximately 25 knots for the 140 miles from the place of diversion to the place of rendezvous was directly attributable to the aforementioned request for assistance by OVERSEAS PROGRESS. Defendant is not now prepared to concede any causal relationship of any additional fuel consumed by CANBERRA because of her increased speed following the rendezvous and until CANBERRA arrived at New York on July 8, 1973.

25. Solely as the result of the aforementioned radio requests by OVERSEAS PROGRESS, William Turpin was taken aboard CANBERRA on July 6, 1973 and while aboard was hospitalized, examined, tested, and treated by the ship's surgeon and assistant surgeon and was cared for by the ship's nurses and was given medication and nourishment. Without conceding any liability therefor or the fair market value of such services, defendant concedes that those services did have a value.

26. Following arrival of CANBERRA at New York on July 8, 1973, William Turpin was taken by ambulance to

the United States Public Health Service Hospital, Staten Island, for further treatment, and was eventually discharged from that Hospital.

27. By debit note dated September 26, 1973 plaintiff billed defendant's agent Maritime Overseas Corporation for CANBERRA's diversion costs, medical, out-of-pocket expenses in the amount of £4693.39 equivalent to $12,108.95, none of which defendant has paid although several times requested by plaintiff.

*28. To assist the Court to follow the movements of CANBERRA and OVERSEAS PROGRESS, there is annexed hereto, marked Exhibit "B", and made a part hereof, a portion of a chart for the mid-Atlantic which shows the movements of CANBERRA in heavy dotted lines from 12 Noon (ship's time) on July 5, 1973 until she changed course at approximately 1930 hours that date and met OVERSEAS PROGRESS at the small dot with a circle around it just north of latitude 35. The course of CANBERRA after that meeting is indicated by a solid heavy black line running to the west. The movements of OVERSEAS PROGRESS on a course due west (270 degrees true) from Gibraltar is shown by a thin line at approximately latitude 36 degrees, which line continued until 1830 hours (ship's time), when OVERSEAS PROGRESS changed course to 229 degrees true in order to meet CANBERRA at the aforementioned circled dot, just north of latitude 35. The scale of nautical miles is found on the right-hand margin of the chart (top margin of the Exhibit), with each degree of latitude being equal to 60 nautical miles.

Dated: April 7, 1975

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* Exhibit "B" is not included in the Joint Appendix because not believed necessary to determination of the appeal.

EXHIBIT "A"

on board: ss CANBERRA

AT SEA
5th July 1973

Captain
Overseas Progress

Dear Sir

I trust you understood my remarks on the R.T. when I came to your assistance. I have to inform you that you should inform your owners my company, P & O Steam Navigation Company, may look to them for reimbursement of diversion costs, medical and out-of-pocket expenses.

Would you please sign a copy of this letter to indicate your understanding and receipt of this information.

Yours faithfully

/s/ W. J. LIDWIN
CAPTAIN
OVERSEAS PROGRESS

/s/ E. SNOWDEN
CAPTAIN

Stipulation and Additional Agreed Fact Statement

The parties, by their respective undersigned attorneys, stipulate that the liability issue herein (i.e., the question of whether defendant is or is not liable to reimburse plaintiff's diversion costs and medical and out-of-pocket expenses) be and hereby is submitted for trial and decision by the Court based on the agreed fact statement dated April 7, 1975 filed herein on April 8, 1975, and the following additional agreed facts:

29. The countersigned message, copy of which is annexed as Exhibit "A" to the parties' agreed fact statement dated April 7, 1975, accurately confirms the radio-telephone ("R.T.") remarks therein summarized; to wit, that plaintiff's Master told defendant's Master that plaintiff "may look" to defendant for reimbursement, and defendant's Master acknowledged that plaintiff's Master had so stated. During these "R.T." remarks, plaintiff's Master did not demand reimbursement on behalf of plaintiff nor did defendant's Master agree to make reimbursement on behalf of defendant. Both Masters simply left open for subsequent determination by their respective employers, plaintiff and defendant, whether plaintiff would demand reimbursement and, if so, whether defendant would make reimbursement.

30. On July 13, 1973, plaintiff sent the letter of which copy is annexed hereto as Exhibit "C" and made a part hereof.

31. On July 23, 1973, defendant's duly authorized agent sent the letter of which copy is annexed hereto as Exhibit "D" and made a part hereof.

32. On September 26, 1973, plaintiff sent the letter and debit note of which copies are annexed hereto as Exhibit "E 1" and Exhibit "E 2" and made a part hereof.

Stipulation and Additional Agreed Fact Statement

33. On October 3, 1973, defendant's duly authorized agent sent the letter of which copy is annexed hereto as Exhibit "F" and made a part hereof.

34. In amplification of what is set forth in paragraph 21 of the agreed fact statement of April 7, 1975, annexed hereto as Exhibits "G 1" and "G 2" and made a part hereof are copies of plaintiff's landing agent's letter of August 23, 1973, and Canberra's surgeon's letter of August 20, 1973.

Dated: June 7, 1976

Stipulation and Additional Agreed Fact Statement

EXHIBIT "F"

(Letterhead of Maritime Overseas Corporation, 511 Fifth Avenue, New York, N. Y. 10017)

October 3, 1973

Our Ref: 6892-P2

P & O Passenger Division
Beaufort House
St. Botolph Street
London EC3A 7DX
England

Attention: Mr. Nicholas H. J. Burnett

Re: S/S "CANBERRA"
Assistance to Mr. William Turpin at sea
ex S/S "OVERSEAS PROGRESS"
July 6, 1973

Gentlemen:

We have for acknowledgment your letter of September 26, 1973 enclosing statement of expenses in connection with the above incident.

Although we are extremely grateful for the kind assistance you have rendered Mr. Turpin, we must point out that your claim does not appear to be in keeping with the norms and practices of the traditional concept of rescue at sea.

Indeed, we have on many occasions rendered similar aid at great risk to our crews and vessels but have never entertained the thought of recovering our expenses.

We hope that our position will meet with your understanding and trust that you will accept the assurance of

Stipulation and Additional Agreed Fact Statement

our willingness to reciprocate in the unhappy event that the roles should one day be reversed.

Very truly yours,

MARITIME OVERSEAS CORPORATION

/s/ RAIMONDO G. NAGGIAR

cc: Assuranceforeningen GARD
Your P & I No. 864/73/LH

cc: Mr. J. D. Hutchison, Vice President
cc: Mr. E. T. Hill

Opinion No. 45,000[1]

GOETTEL, *D. J.*

The sea is a hard master and those who sail her are united in a common struggle. It is their tradition to answer calls of distress regardless of cost or peril. So firmly accepted is this tradition that our laws make it a criminal offense to ignore those "at sea in danger of being lost."[2] This case raises the interesting (and somewhat novel) question of whether those who go to the aid of seamen in distress are entitled to have their expenses reimbursed.

On July 4, 1973, William Turpin, a 63 year old fireman aboard the S.T. OVERSEAS PROGRESS, a tanker owned by the defendant (a New York corporation), began experiencing severe chest pains suggestive of a heart attack. The ship had no doctor, nurse or operating room. Turpin was treated by the ship's officers, who were guided by medical books and radio advice from the U.S. Public Health Service.

On July 5, Turpin suffered a further attack. His condition was considered grave. The maximum speed of the OVERSEAS PROGRESS was 13.8 knots; it would have taken the OVERSEAS PROGRESS 57 hours to reach the nearest shore hospital, approximately 740 miles away. The master of

[1] The parties previously cross-moved for summary judgment on an agreed statement of facts. The Court (U.S.D.J. Pierce) denied the motions finding that there were material issues of fact in dispute. Thereafter (following reassignment of the case) the parties submitted an additional agreed fact statement and stipulated that the case was submitted for trial and decision on the agreed facts.

[2] Title 46 U.S.C. § 728 provides:

> "The master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, crew, or passengers, render assistance to every person who is found at sea in danger of being lost; and if he fails to do so, he shall, upon conviction, be liable to a penalty of not exceeding $1,000 or imprisonment for a term not exceeding two years, or both."

the OVERSEAS PROGRESS sent a radio request to all ships in the vicinity with a doctor. The S.S. CANBERRA, a passenger vessel owned by plaintiff (a British company), was the closest vessel with medical facilities at that time. The two ships agreed to meet. Both altered course, the OVERSEAS PROGRESS maintaining its maximum speed, the CANBERRA increasing its speed from 23 to 25 knots. The ships rendezvoused approximately six and one-quarter hours later.

The CANBERRA took Turpin aboard and had him hospitalized, examined, tested and treated by the ship's surgeon and assistant surgeon. He was cared for by the ship's nurses and was given medication and nourishment. After taking Turpin aboard, the CANBERRA continued at its increased speed to New York, arriving on July 8, 1973, about two and one-half hours after her scheduled arrival time, having travelled 232 extra miles because of the request for assistance by the OVERSEAS PROGRESS. Turpin was transferred to a Public Health Service hospital for further treatment; he survived the attack.

In August, 1973, defendant received a bill from plaintiff's New York landing agent for $248 for services rendered by the CANBERRA's surgeon; the defendant paid that bill. On September 26, 1973, plaintiff billed the defendant's agent for CANBERRA's diversion costs, other medical and out-of-pocket expenses totalling $12,108.95. Defendant declined to pay. This action was then commenced.

Once it became apparent that Turpin's illness was serious the defendant became obligated to make reasonable efforts to provide him with medical care. *See The Iroquois*, 194 U.S. 240, 243 (1904); G. Gilmore & C. Black, *The Law of Admiralty*, 2d ed., § 6-13 at 310. The question is whether

the defendant, by entrusting Turpin to plaintiff's care, became liable for the CANBERRA's diversion costs and out-of-pocket expenses.

The arguments of the parties raise two issues: 1) whether the action is, in essence, an attempt at remuneration for "pure life salvage" and 2) whether there can be a recovery based on contract (quantum meruit or unjust enrichment).

Defendant contends that plaintiff is actually seeking an award for life salvage and that it is hornbook law that pure life salvage, *per se,* is insufficient to allow a recovery. As *The Law of Admiralty, supra,* states, § 8-1 at 532:

> "Historically, the saving of life was regarded as fulfilling a moral duty but not as entitling the salvor to a reward. Thus there was a natural temptation to save property first and look around for survivors later. Life salvors now have by statute a right to a 'fair share' of the award made to salvors who have saved property on the same occasions.[3] Life salvage, unaccompanied by property salvage, still goes unrewarded."

Plaintiff counters that this is not pure life salvage since it saved the defendant considerable expense. This saving of expense, in and of itself, is sufficient to constitute a form of "salvage," argues plaintiff. See Brown, *Compensation for Life Salvage at Sea,* 2 Hastings L.J. 53, 55 (1951). In addition, plaintiff contends that life salvage

[3] Title 46 U.S.C. § 729 provides:

> "Salvors of human life, who have taken part in the services rendered on the occasion of the accident giving rise to salvage, are entitled to a fair share of the remuneration awarded to the salvors of the vessel, her cargo and accessories."

principles are inapplicable here as it is seeking only reimbursement for expenses and not a salvage award.

The law of the sea has clearly not allowed an award solely for life salvage. In order to recover for life salvage, there must be property salvaged, *St. Paul Marine Transp.* v. *Cerro Sales Corp.,* 313 F. Supp. 377 (D. Hawaii 1970), and it must occur "substantially at the time and while both lives and property were in distress . . ." *The Eastland,* 262 F. 535, 541 (N.D. Ill. 1919). American cases do not support the proposition that one who saves life at sea, disassociated from any salvage of property, is entitled to an award.

Here plaintiff maintains that it is asking only for reimbursement of expenses, not an award. This distinction has not been recognized by the courts. In fact, Professor Brown, in his article, *supra,* admits that such an extension of the principle of salvage, while desirable, was not then (1951) embodied in our law. *See,* 2 Hastings L.J. at 54. This situation, while not the classic rescue at sea, does resemble life salvage, as it is possible that Turpin would not have survived a 57-hour trip to the nearest shore hospital.

The courts have been reluctant to assess maritime liens against vessels because of services to its passengers and crew. The explanation for this is that there is a moral duty to aid those in danger at sea and that it would be an undue burden on the ship owner whose property and personal interests had not been served. Brown, *Compensation for Life Salvage at Sea, supra* at 55.

The contract claim constitutes the crux of plaintiff's case. The complaint sounds in unjust enrichment and, in its memorandum, plaintiff cites a line of cases where a

defendant was held liable for a plaintiff's services under a quantum meruit theory. *See, e.g., Rathbun* v. *Halvorson,* 181 F.2d 57 (5th Cir. 1950); *Kane* v. *M/V Leda,* 355 F. Supp. 796 (E.D. La. 1972), *aff'd,* 491 F.2d 899 (5th Cir. 1974); *Murry* v. *The Meteor,* 93 F.Supp. 274 (E.D.N.Y. 1950). On the other hand, defendant argues that the essential elements of an intention to pay and an implied promise to pay are lacking here; consequently plaintiff cannot prevail on this theory.

Admiralty has no power to enforce an independent equitable claim. *The Eclipse,* 135 U.S. 599, 608 (1890). However, admiralty does have jurisdiction over causes of action based on the concept of unjust enrichment as long as the claim arises out of a maritime contract. *Archawski* v. *Hanioti,* 350 U.S. 532, 535 (1956). Here there was no written contract between the parties. Consequently, plaintiff must establish its claim either via quasi-contract (a contract implied in law) or quantum meruit (a contract implied in fact). *Miller* v. *Schloss,* 218 N.Y. 400, 406-07 (1916) distinguishes the two types of implied contracts:

> "A contract cannot be implied *in fact* where the facts are inconsistent with its existence; or against the declaration of the party to be charged; . . . The assent of the person to be charged is necessary and unless he has conducted himself in such a manner that his assent may fairly be inferred he has not contracted.
>
> * * * * *
>
> A quasi or constructive contract rests upon the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another. . . . It is an obligation which the law creates. . . ."

At the time the arrangements were made for the rendezvous, the masters of the vessels had a radio-telephone conversation in which the Master of the S.S. CANBERRA advised the Master of the OVERSEAS PROGRESS that plaintiff might look to defendant for reimbursement. This was confirmed by a letter dated July 5, 1973 from the Master of the CANBERRA to the Captain of the OVERSEAS PROGRESS which stated:

> "I trust you understood my remarks on the R.T. when I came to your assistance. I have to inform you that you should inform your owners that my company, P & O Steam Navigation Company, may look to them for reimbursement of diversion costs, medical and out-of-pocket expenses. Would you please sign a copy of this letter to indicate your understanding and receipt of this information."

The parties have agreed in their additional agreed fact statement (#29) that the radio conversation and the letter did not constitute a demand for reimbursement, nor an agreement to make one; rather:

> ". . . Both masters simply left open for subsequent determination by their respective employers, plaintiff and defendant, whether plaintiff would demand reimbursement and, if so, whether defendant would make reimbursement."

In subsequent correspondence the owners of the CANBERRA made a claim for reimbursement of expenses and the defendants refused to pay. With respect to the claim for quantum meruit, no case has been found by the Court, or cited by the parties, which applies quantum meruit to the saving of life at sea. All of the cases cited by plaintiff

deal with property salvage. Where property is involved, a court will imply a contract in fact if the property has been improved; *see Kane* v. *M/V Leda, supra,* 355 F.Supp. at 801.

Plaintiff's final argument looks to the theory of quasi-contract, or unjust enrichment. "The law creates . . . [a quasi-contract] regardless of the intention of the parties, to assure a just and equitable result." *Bradkin* v. *Leverton,* 26 N.Y.2d 192, 196 (1970). There are certain elements which are part of an action in quasi-contract. One of these elements is misconduct or fault, such as breach of fiduciary duty, on the part of the party sought to be charged. *Shooters Island Shipyard Corp.* v. *Standard Shipbuilding Corp.,* 293 F. 706 (3d Cir. 1923); *F. E. Grauwiller Transp. Co.* v. *King,* 131 F.Supp. 630, 634 (E.D. N.Y. 1955), *aff'd* 229 F.2d 153 (2d Cir. 1956). In this case, defendant's conduct clearly involved no misconduct, fault or undue advantage. As the above elements are lacking, the plaintiff cannot recover its diversion costs in quasi-contract, notwithstanding the principle that equity is no stranger to admiralty. *See Demsey & Associates, Inc.* v. *S.S. Sea Star,* 500 F.2d 409, 411 (2d Cir. 1974).

There is, however, one aspect of unjust enrichment present here. Plaintiff claims a total of $12,108.95 in diversion costs. Virtually all of this is for the additional oil used. But a small amount, $500, is for "Accommodation and Nursing", the equivalent of hospitalization costs. Had the defendant's ship been in port it would have been required to pay such expenses for its crew member, unless public facilities were available.[4] Moreover, these costs accrued after the transfer ("rescue") was effected and

[4] Public facilities for seamen are provided in the United States by the Public Health Service, 42 U.S.C. §249.

were part of custodial treatment and care. Payment of this expense is not a part of "life salvage."

Considering the absence of controlling authority it appears appropriate to consider the public policy aspects. As a foreign flag vessel operating in international waters, the S.S. CANBERRA was not subject to the criminal sanctions of 46 U.S.C. § 728. It has long been accepted that awards are made after salvage to encourage voluntary assistance since "the whole theory of salvage is predicated upon the proposition that by the general admiralty law there is no legal duty to aid a thing or person who is in distress". S. H. Robinson, *Handbook of Admiralty Law* (1939) at 722. From this standpoint the allowance of an award might be said to encourage assistance. On the other hand, a ship with a stricken crewman might be reluctant to seek aid if large, unforeseen expenses could be assessed against it. The answer would seem to be in appropriately drafted legislation or international compacts imposing sensible limitations. *See Aviation and Salvage: The Application of Salvage Principles to Aircraft,* 36 Colum. L. Rev. 224 (1936) dealing with air crash salvage.

For the present it would appear to be beyond the province of this district court to inaugurate a new policy deviating from the centuries old common law doctrine. *The Life Salver Problem in Admiralty,* 63 Yale L.J. 779, 784 (1954). Except for an award of the $500 nursing and accommodation expense,[5] which defendant would have been obligated

[5] Defendant concedes that the hospitalization had a value but is not prepared to concede that its fair market value was $500. It has not, however, submitted any evidence disputing plaintiff's claim. For two days of intensive care service (plaintiff's ship had an operating room, a surgeon, an assistant surgeon, two nurses and a hospital assistant), the charge does not seem unreasonable.

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to pay to a private hospital, and which was part of custodial care and not rescue, the plaintiff may not recover. Plaintiff is left, however, with the recognition that its efforts were in keeping with the finest traditions of the sea.

Judgment should be entered accordingly, within ten days.

So Ordered:

Dated: New York, N.Y.,
August 20, 1976.

/s/ Gerald L. Goettel
U.S.D.J.

Judgment No. 76,809

The parties having stipulated that the liability issue herein be tried and decided by the Court on agreed fact statements filed herein dated April 7, 1975 and June 7, 1976, and the Court (Goettel, J.), pursuant to that stipulation and after due consideration and deliberation, having filed its opinion with findings of fact and conclusions of law dated August 20, 1976, ordering that judgment be entered in accordance therewith, it is

Ordered and adjudged that plaintiff The Peninsular & Oriental Steam Navigation Company recover of defendant Overseas Oil Carriers, Inc., the sum of $500. and plaintiff's costs of action to be taxed.

New York, N. Y.
September 1, 1976

Gerald L. Goettel
U.S.D.J.

Opinion of the United States Court of Appeals

UNITED STATES COURT OF APPEALS

For the Second Circuit

No. 557—September Term, 1976.

(Argued April 6, 1977 Decided April 25, 1977.)

Docket No. 76-7471

The Peninsular & Oriental Steam Navigation Company,
Plaintiff-Appellant,

v.

Overseas Oil Carriers, Inc.,
Defendant-Appellee.

Before:

Kaufman, *Chief Judge,*
Lumbard and Van Graafeiland, *Circuit Judges.*

Appeal from a judgment entered in the United States District Court for the Southern District of New York, Gerard Goettel, *Judge,* granting summary judgment and denying appellant recovery of fuel expenses incurred when its vessel diverted from her course to provide emergency medical care to a crewman aboard appellee's ship.

Reversed.

William M. Kimball (Burlingham, Underwood & Lord, New York, New York, on the brief), *for Plaintiff-Appellant.*

David P. H. Watson (Haight, Gardner, Poor & Havens, New York, New York, on the brief), *for Defendant-Appellee.*

Opinion of United States Court of Appeals

KAUFMAN, *Chief Judge:*

The perils and hardships of the sea have been notorious since the voyages of Odysseus. Although the age of sirens and cyclopes is past, the isolation and uncertainty of maritime life continue to create unique problems for sailors and courts of admiralty. In this case, we must decide whether the owner of a vessel that alters course to come to the aid of a stricken seaman aboard a ship without medical staff, may recover additional fuel costs caused by the diversion. Under the circumstances of this case, we believe application of equitable principles requires reimbursement of such expenses. Accordingly, we reverse the district court's decision to the contrary.

I.

A brief discussion of the facts, which were stipulated below, will facilitate understanding the issues raised on this appeal. The S.T. OVERSEAS PROGRESS is an American flag tanker of approximately 13,030 gross tons and a maximum speed of about 13.8 knots (15.9 mph). Her owner, Overseas Oil Carriers, is an American corporation with its principal place of business in New York. On July 4, 1973, the OVERSEAS PROGRESS was traveling in the mid-Atlantic Ocean, en route from Haifa, Israel to Baltimore. Suddenly, the ship's fireman, William Turpin, was stricken with severe chest pains. The OVERSEAS PROGRESS did not have a doctor aboard. Her officers, suspecting that the 63-year-old seaman had suffered a heart attack, aided Turpin as best they could. Guided by the ship's medical books and radio advice from the Public Health Service, they administered several morphine injections to relieve Turpin's severe pain and gave him glycerin nitrate

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tablets. Nonetheless, Turpin's condition did not improve. During the evening of July 5, 1973, he suffered another attack, again accompanied by severe chest pains.

Realizing that his vessel's resources were inadequate to deal with Turpin's increasingly serious condition, the Captain of the OVERSEAS PROGRESS, W. J. Lidwin, sent out a radio message calling for responses from all ships in the vicinity with doctors aboard. Three vessels answered the call. The nearest was the S.S. CANBERRA, a British flag passenger vessel.[1] The CANBERRA, with a maximum speed of 25 knots (approx. 28.8 mph) was considerably faster than the OVERSEAS PROGRESS, and was consequently able to convey Turpin more quickly to shore facilities. Moreover, the CANBERRA itself carried a hospital with a fully equipped operating room and medical personnel able to provide Turpin with immediate attention. At the time she received the OVERSEAS PROGRESS's call, the CANBERRA was en route to New York from Dakar, Senegal, traveling at 23 knots.

Realizing that the CANBERRA's position and equipment rendered it uniquely able to help the stricken seaman, the OVERSEAS PROGRESS directed a second radio message to the British liner, explaining that one of her crew members was in critical condition after suffering an apparent heart attack. The CANBERRA was requested to rendezvous with the OVERSEAS PROGRESS and provide treatment for the ailing seaman. In response to the distress call, the CANBERRA changed course and increased her speed to 25 knots. The OVERSEAS PROGRESS, which was already traveling at maximum speed, altered course to intercept the CANBERRA.

[1] The CANBERRA was owned by The Peninsular & Oriental Steam Navigation Company, (P & O), an English limited liability company with its principal place of business in London.

At that time the OVERSEAS PROGRESS was 740 miles from the nearest shore hospital, at St. John's, Newfoundland. It would have taken the tanker, traveling at close to maximum speed, 57 hours to reach that destination. By contrast, the meeting of the CANBERRA and the OVERSEAS PROGRESS was achieved in 6½ hours.

In the course of their radio communications, the masters of the CANBERRA and the OVERSEAS PROGRESS briefly considered the allocation of the rescue effort's costs. Captain Snowden of the CANBERRA informed Captain Lidwin that the CANBERRA's owner, the Peninsular & Oriental Steam Navigation Co. (P & O), "may look" to the owner of the OVERSEAS PROGRESS for "reimbursement of diversion costs, medical and out of pocket expenses." Captain Lidwin did not in any way indicate that such compensation would be refused. When the two ships met, Captain Snowden presented a letter reiterating the likelihood that P & O would seek reimbursement. This letter was then countersigned by Captain Lidwin. The parties have stipulated that this document was neither a demand for payment nor an agreement to reimburse the CANBERRA; rather, the ships' masters indicated an awareness of the problem and simply left open the question of payment for subsequent determination by the vessels' owners.

Upon encountering the OVERSEAS PROGRESS, the CANBERRA lowered one of her lifeboats and transferred William Turpin aboard. He was examined by the CANBERRA's surgeon, who diagnosed his illness as a myocardial infarction, a form of heart attack that results in the partial destruction of the central heart muscle. After taking Turpin aboard, the CANBERRA resumed her course to New York at maximum speed, 25 knots. Despite the fact that she had traveled an additional 232 miles to aid

Turpin, the increased velocity enabled the CANBERRA to arrive in New York only 2½ hours later than her scheduled arrival time. Turpin was rushed by ambulance to the United States Public Health Hospital on Staten Island. Eventually, he recovered and was discharged.

Overseas Oil Carriers, the owner of the OVERSEAS PROGRESS, promptly paid $248 to the CANBERRA's surgeon for medical expenses rendered to Turpin. But it was far less generous in responding to P & O's request for reimbursement. In response to P & O's letter of September 26, 1973, seeking $12,108.95 for Turpin's accommodation and nursing while on the CANBERRA and, principally, for the additional fuel consumed by the liner as a result of the extra distance traveled and the increased speed the CANBERRA had required to reach New York without serious delay, Overseas Oil Carriers's agent, in a letter dated October 3, declined to pay any part of this amount. Although, the agent wrote, "we are extremely grateful for the kind of assistance you have rendered Mr. Turpin", he continued to assert that payment of the claim would be out of keeping with the "traditional concept of rescue at sea."

On April 26, 1974, P & O filed a complaint in the Southern District of New York, seeking recovery of the $12,108.95 it had requested previously. The parties each moved for summary judgment on stipulated facts. In an opinion dated August 20, 1976, Judge Goettel granted recovery of $500 for nursing services but denied any reimbursement for the CANBERRA's additional fuel expenses. He noted that under traditional admiralty doctrines of "salvage", there could be no reward for "pure life salvage", i.e. a rescue at sea where men's lives are saved but property is not simultaneously recovered. Judge Goettel also rejected any claim based on "quasi-contract"

because he failed to find "misconduct or fault" by Overseas Oil Carriers. He did, however, grant recovery for nursing services since Overseas would have been obliged to pay such costs if Turpin had been placed in a shore hospital. We believe, that the CANBERRA, in saving the life of Seaman Turpin, did more than uphold the great traditions of the sea. In discharging the OVERSEAS PROGRESS's request, the CANBERRA earned the right to recover the fair value of the services rendered. We accordingly reverse the judgment below.

II.

When Turpin fell ill, the Captain of the S.T. OVERSEAS PROGRESS became obligated to make reasonable efforts to provide him with swift medical care, pursuant to the ship's responsibility for "maintenance and cure". This ancient admiralty doctrine has been described as a preindustrial analogue to modern "workman's compensation" statutes.[2] If a sailor is stricken with injury or illness

[2] Norris, *Law of Seamen* (1970) § 538 *et seq.* The history of this doctrine may be traced to the Laws of Oleron, (Roll D'Oleron). This maritime code, which originated in Gascony, is believed to have been introduced in England by Richard I after his return from the Holy Land. It enunciated a doctrine remarkably similar to the present rules of maintenance and cure, providing, *inter alia:*

> If it happens that sickness seizes on any one of the mariners, while in the service of the ship, the master ought to set him ashore, to provide lodging and candlelight for him, and also spare him one of the ship-boys, or hire a woman to attend him, and likewise to afford him such diet as is usual in the ship . . .

The Code, however, was far less solicitous of injuries obtained through "willful misconduct", particularly while on land. It stated:

> If any of the mariners hired by the master of any vessel, go out of the ship without his leave, and get themselves drunk, and thereby happens contempt to their master, debates, or fighting and quarreling among themselves; whereby some happen to be wounded: in this case the master shall not be obliged to get them cured . . . Norris, *supra* § 540.

at sea, not caused by the seaman's own willful misconduct, his employer must assume responsibility for his medical care, food, lodging and wages for a reasonable period. *The Bouker No. 2*, 241 F. 831 (2d Cir.), *cert. den.*, 245 U.S. 647 (1917), 2 Norris, *The Law of Seamen* §542-544 (1970).

On vessels that do not carry a surgical staff, the ship's master has a duty, in the sound exercise of his judgment and depending on the circumstances, to have the seaman taken speedily to a hospital or the nearest port where surgical care may be obtained. *The Iroquois,* 194 U.S. 240, 243 (1904); *The Cuzco,* 154 F. 177 (2d Cir. 1907); Norris, *supra* §584. Without the assistance of the S.S. CANBERRA, or a vessel with similar facilities, performance of this duty would have required the OVERSEAS PROGRESS to travel to the shore hospital at St. John's, Newfoundland, entailing a considerable expenditure of time and additional fuel. The CANBERRA, by agreeing to rendezvous, provided Turpin with swifter medical attention and saved the OVERSEAS PROGRESS considerable costs. Through her expeditious intervention, the CANBERRA performed the OVERSEAS PROGRESS's duty to Turpin, far more swiftly and more efficiently than it could have been carried out by the OVERSEAS PROGRESS. In such circumstances, the principles of "quasi-contract" require recovery.

Although the law ordinarily frowns on the claims of a "mere volunteer", there is a class of cases where it is imperative that a duty be performed swiftly and efficiently for the protection of the public or an innocent third party, in which a "good Samaritan" who voluntarily intervenes to perform the duty may receive restitution for his services. This rule has become crystallized in the doctrine

that performance of another's duty to a third person, if rendered by one qualified to provide such services with intent to charge for them, is a ground for recovery in quasi-contract. This principle is limited to cases where the services are immediately necessary to prevent injury or suffering. *Greenspan* v. *Slate*, 97 A.2d 390, 397 (N.J. 1953) (Vanderbilt, *C.J.*); *Restatement of Restitution* § 114. Cf. *Wyandotte Trans. Co.* v. *United States*, 389 U.S. 191, 204 (1967).

The circumstances of this case compel application of the rule. The OVERSEAS PROGRESS had a manifest duty to provide Turpin with speedy medical attention. Her Captain, in the exercise of his reasonable discretion, asked the CANBERRA to perform that duty in her stead. It is undisputed that the CANBERRA, with her fully equipped hospital and greater speed, was a proper party to provide such services, and the countersigned letter from the CANBERRA's Captain suffices to demonstrate the liner's intent to charge.[3]

Moreover, this is not a case in which a "good Samaritan" volunteered his services without the knowledge or consent of the person whose duty was discharged. OVERSEAS PROGRESS actually *requested* the CANBERRA to come to Turpin's aid. This decision was made after full consideration of the seaman's condition and other available sources of medical assistance.[4]

[3] Although the parties have stipulated that the letter was not a demand for payment, it was sufficient to put Overseas on notice that the services were not intended as a gratuity.

[4] Moreover, the CANBERRA's actions represented a tangible pecuniary benefit to the OVERSEAS PROGRESS. Without her assistance, or that of a similar ship, the OVERSEAS PROGRESS would have incurred much greater delay and fuel expenses in transporting Turpin to a shore hospital. It is not necessary, in cases of this character, that the "benefit" conferred be of a monetary nature. The value rendered in performing another's duty is sufficient to permit recovery. Thus, if the OVERSEAS PROGRESS had been totally unable to reach a shore hospital and the CANBERRA had been Turpin's only source of aid, it might be argued that her intervention, although vital to Turpin, did not save OVERSEAS PROGRESS from incurring any additional expense. CANBERRA could nonetheless have recovered for providing such assistance. In this case, however, where performance of another's duty and traditional "unjust enrichment" are present, both rules clearly require recovery.

Judge Goettel followed a similar analysis in awarding P & O restitution for Turpin's nursing and accommodation aboard the CANBERRA, noting that these were expenses normally borne by the shipowner. The costs of swiftly bringing a disabled seaman to a surgeon are also part of the shipowner's duty of maintenance and cure, and there seems no reason to grant recovery of one expense and not the other.

[5] 288 F.2d 244 (2d Cir. 1955) *on rehearing* 230 F.2d 75, 77 (2d Cir.), *aff'd* 351 U.S. 976 (1956).

III.

Overseas contends that the principles of quasi-contract, though presumably reflecting our sense of fair and orderly arrangement of affairs on *terra firma*, should not be applied to occurrences on the sea. We fail to perceive any reason for this distinction. Although it is true that the fortuitousness of jurisdiction in eighteenth century English courts long left the application of restitutionary principles to admiralty in doubt, today the law is clear that quasi-contractual claims may be considered by the federal courts in admiralty if they arise out of maritime contracts, see *Archawski* v. *Hanioti*, 350 U.S. 532, 536 (1956), or other inherently maritime transactions, *see Sword Line Inc.* v. *United States*.[5] It is difficult to imagine a transaction more maritime in nature than the one presented here, where two ships arranged a rendezvous on the high

seas in order to save the life of a sailor for whom, by ancient admiralty doctrine, one of the ships was responsible.

Overseas urges that quasi-contractual recovery under these circumstances would, in effect, subvert the long-established rule in admiralty that prohibits recovery for "pure life salvage". In admiralty, a person who rescues property at sea may obtain an award based not merely on the costs he incurs but on the value of the property saved and the degree of danger encountered. These rules are designed to encourage seamen to render valorous service in the salvage of property, and remuneration has accordingly been liberal. *The Clarita and the Clara,* 90 U.S. 1, 17 (1874); *Gilmore and Black, supra, Law of Admiralty,* § 8-1. Yet it seems to have been admiralty law that rescuing lives at sea, rather than property, merited moral approbation, but no pecuniary reward.[6]

Overseas bids us to ignore the sound reasons that warrant recovery in this case, and to defer instead to this hoary, and almost universally condemned, rule of the sea. But, we do not find the rule on pure life salvage, regardless of its dubious vitality, relevant to the facts. P & O is not seeking a reward; it merely requests reimbursement for its expenses. And, we do not confront a daring "rescue

[6] This rule was modified by the enactment of 46 U.S.C. § 729 in 1912. That statute allowed life salvors to receive a fair share of a property salvage award arising out of the same maritime accident. It was intended to remove the disincentive to life salvage that resulted from the traditional rule, which encouraged sailors to rescue property rather than aid fellow seamen in jeopardy.

The irrationality of providing rewards for property salvage but not requiring payment for rescuing lives has been under attack for many years. L. Jarett, "The Life Salvor Problem in Admiralty", 63 *Yale L. J.* 779 (1954). Under British statutory law, a person who saves a life on a British vessel anywhere in the world, or on a foreign vessel in British waters, may claim a life salvage award. *Jarett, supra,* p. 782-83.

at sea", but the transfer of an ailing seaman from one seaworthy vessel to another. Under these circumstances we do not believe the questionable doctrine of "pure life salvage" bars recovery.

Finally, Overseas contends that the rule we announce today will disrupt traditional maritime practices, making assistance to an ailing seaman a matter of negotiation rather than moral duty. On the contrary, we believe this rule will encourage seamen aboard large vessels to perform their moral obligation to their brethren on smaller ships without fear their benevolence will result in unreasonable expenses to their ship's owners.

Overseas also predicts that masters of small ships will be reluctant to call for aid, knowing their actions may result in the imposition of sizable fuel costs. But, masters are already under a legal obligation to make *reasonable* efforts to secure medical care for their stricken crewmen. In determining the proper course of action, they must consider the seriousness of the seaman's illness, the availability and adequacy of medical facilities and the costs that will be incurred in securing aid. Once it is established that the fuel expenses of a ship rendering assistance is one of these costs, it will simply become another factor to be considered in the master's calculation. With radiotelegraphy, it is a simple matter for him to ascertain the size and location of ships in the vicinity, just as the OVERSEAS PROGRESS did, and to determine which vessel can be reached with minimum expense and delay. Thus, we believe the rule we announce today will result both in greater willingness of large vessels to render assistance and in the utilization of the medical facilities of those vessels in the most efficient and productive manner.

Opinion of United States Court of Appeals

IV.

Although we believe the masters of both vessels acted admirably and, as Judge Goettel noted, "in keeping with the finest traditions of the sea", the OVERSEAS PROGRESS was in a far better position to evaluate the relevant costs and benefits of seeking various forms of aid for Turpin. It was her master's decision to summon the CANBERRA that entailed the fuel expenses at issue here. Since vessels such as OVERSEAS PROGRESS are best able to avoid unnecessary costs in obtaining medical aid for their crewmen, we conclude that the owners of such ships are liable for the reasonable value of services rendered by other vessels at their request, regardless of the value of the benefit actually conferred.

In many circumstances, reasonable value may be determined by the market price for obtaining comparable services. But here, the CANBERRA's assistance was *sui generis,* since no other vessel could have reached Turpin as swiftly, and thus, none could have provided comparable medical care to a man in his critical condition. Under these circumstances, the only possible measure of "reasonable value" is the reasonable expense incurred by CANBERRA as a result of her assistance to Turpin. The parties have agreed that such expenses represent $8,500 of P & O's claim.[7] Accordingly, we reverse and order judgment entered for Peninsular and Oriental Steam Navigation Co. in the amount of $8,500.

[7] In the stipulated fact statement before the district court, Overseas did not concede that the additional fuel cost occasioned by the CANBERRA's increased speed to New York was proximately caused by the rendezvous with the OVERSEAS PROGRESS. During oral argument, this Court asked Overseas to attempt to arrive at agreement with P & O on this factual issue so that a remand for damages could be avoided, if we decided to reverse. The parties have since informed this Court that $6,294.30 of the expense involved in increasing speed was attributable to Turpin's illness. This amount, added to $2,205.70 for fuel expended by the CANBERRA's diversion, results in a total claim of $8,500.

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

76-7471

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At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-fifth day of April one thousand nine hundred and seventy-seven.

Present:

HON. IRVING R. KAUFMAN
Chief Judge

HON. J. EDWARD LUMBARD

HON. ELLSWORTH A. VANGRAAFEILAND
Circuit Judges,

—o—

THE PENINSULAR & ORIENTAL STEAM NAVIGATION COMPANY,
Plaintiff-Appellant,

v.

OVERSEAS OIL CARRIERS, INC.,
Defendant-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

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Judgment of United States Court of Appeals

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed in accordance with the opinion of this court with costs to be taxed against the appellee.

A. Daniel Fusaro
Clerk

By Arthur Heller
Arthur Heller
Deputy Clerk

A true copy,
A. Daniel Fusaro
Clerk